

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ROY EDWARD SMITH	§	
	§	
	§	
v.	§	Case No. 6:20-cv-545-JDK-JDL
	§	(Lead case)
JACOB PUTMAN, et al.	§	
	§	
ROY EDWARD SMITH	§	
	§	
	§	
v.	§	Case No. 6:21-cv-37-JDK-JDL
	§	(Consolidated case)
VICTORIA D. MASSEY	§	
	§	

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Roy Edward Smith, a prisoner within the Texas Department of Criminal Justice (TDCJ), proceeding pro se, filed these two civil rights lawsuits pursuant to 42 U.S.C. § 1983. Both cases were referred to United States Magistrate Judge John D. Love for findings of fact, conclusions of law, and recommendations for the disposition.

In the first case, No. 6:20-cv-545, Plaintiff sues Judge Christi Kennedy, District Attorney Jacob Putnam, and Victoria Massey, the victim of the crime for which Plaintiff was convicted. In the second case, No. 6:21-cv-37, he sues only Defendant Massey. In both cases, he complains that Defendants caused him to be convicted of a crime he did not commit. Judge Love consolidated the two cases because of common questions of law and fact. Docket No. 11.

On December 7, 2020, Judge Love issued a Report recommending that Plaintiff's initial case be dismissed until such time as Plaintiff can show that his conviction has been overturned, expunged, or otherwise set aside, as required by *Heck v. Humphrey*, 512 U.S. 477, 486 (1994). Docket No. 6. In response, Plaintiff filed an amended complaint stating that he was convicted of a crime he did not commit and that he would not need a lawsuit if his conviction were overturned or set aside. Docket No. 9.


Where a party timely objects to the Report and Recommendation, the Court reviews the objected-to findings and conclusions of the Magistrate Judge de novo. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

The Court construes Plaintiff's amended complaint as incorporating objections to the Report. Having conducted a de novo review of the record in these cases and the Magistrate Judge's Report, the Court has determined that the Report of the Magistrate Judge is correct and that Plaintiff's objections are without merit. Further, the Court determines that the recommendation of the Report also applies to the complaint filed in the consolidated case, No. 6:21-cv-37.

Accordingly, the Court hereby **ADOPTS** the Report of the Magistrate Judge (Docket No. 6) as the opinion of the District Court. Plaintiff's claims in both

consolidated cases are **DISMISSED** with prejudice until such time as Plaintiff can show that the conviction forming the basis of these claims has been overturned, expunged by executive order, declared invalid in a state collateral proceeding, or called into question through the issuance of a federal writ of habeas corpus.

So **ORDERED** and **SIGNED** this **26th** day of **January, 2021**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE